

MAY 24 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

DAR SA, a Bahamian corporation,

Plaintiff - Appellee,

v.

JLA NORDSTJAERNA, a business trust,

Defendant,

and

DAVID L. JOHNSON; et al.,

Defendants - Appellants.

No. 04-35361

D.C. No. CV-01-01732-TSZ

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington
Thomas S. Zilly, District Judge, Presiding

Submitted May 2, 2006^{**}
Seattle, Washington

Before: REINHARDT, McKEOWN, and CLIFTON, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

David and Karen Johnson appeal pro se the district court's judgment in favor of Dar SA in its action alleging securities fraud under Washington law. Dar SA cross appeals for attorneys' fees for defending the appeal. We affirm the district court's judgment.

The court did not err as a matter of law in applying Washington's securities law, because the court was not required to find that David Johnson engaged in coercion or pressure in order to find him liable under the statute. *See* RCW 21.20.010; *see also Haberman v. Washington Public Power Supply System*, 744 P.2d 1032, 1051 (Wash. 1987); *Kittilson v. Ford*, 608 P.2d 264, 266 (Wash. 1980). Nor was it clear error for the court to conclude as a matter of fact that Johnson was liable under the statute, for the record is replete with evidence of his active involvement in this fictional investment scheme, including evidence of a negotiated commission for his participation.

The Johnsons' evidentiary objection to the admission of the Washington Department of Financial Institutions consent order was not raised in the district court and therefore the argument was waived. *See* Federal Rule of Evidence 103(a)(1). Even if the Johnsons had not waived the argument, the court acted within its discretion under Federal Rule of Evidence 803(8)(c). Further, the

Johnsons' factual claim that the court misinterpreted the order is without support in the record.

The general equitable defense the Johnsons raise on appeal, based upon Duncan's unclean hands vis-a-vis his investors, is unavailable under Washington securities law. *See Go2Net, Inc. v. FreeYellow.com, Inc.*, 109 P.3d 875, 881 (Wash. App. 2005). The court's statements in the oral opinion pertaining to Duncan's culpability do not undermine the court's holding on David Johnson's liability.

Finally, the Johnsons' claim of inadequate representation fails because they were not entitled to be provided counsel in defending this civil case. *See Lassiter v. Dep't of Social Services*, 452 U.S. 18, 25 (1981). Moreover, they were in fact represented by counsel throughout the proceedings prior to trial.

Having thus prevailed on appeal, Dar SA is entitled to attorneys' fees incurred in defending the appeal under RCW 21.20.430. We remand to the district court for calculation of fees. *See Garretson v. Red-Co Inc.*, 516 P.2d 1039, 1043 (Wash. App. 1973).

AFFIRMED; REMANDED.